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JAN 30 2004

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John David Melius
2725 Vista Court
Waldorf, MD 20603

JAN 30 2004

OFFICE OF THE DIRECTOR
TC 3600

In re Application of :
John David Melius :
Application No. 10/060,142 :
Filed: February 1, 2002 :
For: ERGONOMIC SWIM FIN APPARATUS :
DECISION ON PETITION
TO WITHDRAW THE
HOLDING OF ABANDONMENT

This is in reply to applicant's communication, filed in the United States Patent and Trademark Office on September 26, 2003. This communication is being treated as a petition to withdraw the holding of abandonment.

The petition is **DISMISSED** pending submission of a renewed petition.

A review of the file record reveals that an Office action was mailed to applicant at the address of record on February 14, 2003. Since a response to the February 14, 2003 Office action has not been received, the application was held abandoned and a Notice of Abandonment was mailed September 23, 2003.

There is a strong presumption that mail properly addressed and delivered to the United States Postal Service was in fact delivered to the addressee. An allegation that an Office communication was not received may be considered in a formal petition for the withdrawal of the holding of abandonment, in accordance with *Delgar Inc. v. Schuyler*, 172 USPQ 513. However, the presumption that the Office communication was delivered to applicant may be overcome by a showing that the communication was not, in fact, received as indicated below.

Applicant's (in this case the inventor, Mr. John Melius) statements of non-receipt should include a statement by him, and by anyone else at applicant's correspondence address, who would have handled the Office communication, and include any available documentary evidence of mail received, covering a reasonable period after the date of the Office communication, to show non-receipt of the communication in question. Copies of records on which the receipt date of the Office communication would have been entered had it been received, (e.g., a copy of the outside of the file maintained by applicant), are required if available. Also, a showing of any docket records or other method which would serve as a reminder of a response due date should be submitted. Whatever method applicant uses as a reminder, and submits in response to this decision should be adequately explained. Also, a statement is required that a search of the file maintained by applicant, or any other location where correspondence from the USPTO is kept, failed to find a copy of the Office communication in question. Finally, applicant must state that he was in fact at the correspondence address of record at the time the Office action would have been received.

Any such exhibits should be submitted as part of statement(s) showing that no Office communication was ever received.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.181" and should be mailed to the Commissioner for Patents, P.O. Box 1450, Technology Center 3600, Alexandria, VA 22313-1450.



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RAR/cps: 1/15/04